



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 29, 1994

Mr. Richard J. Miller
Bell County Attorney
P.O. Box 1127
Belton, Texas 76513

OR94-296

Dear Mr. Miller:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former V.T.C.S. article 6252-17a). Your request was assigned ID# 24800.

As the county attorney for Bell County, you inquire whether the justices of the peace in Bell County must release, pursuant to the Open Records Act, all search warrants, including any sworn affidavit and the return of the warrant, that they have issued during the previous twelve months. As a general rule, the judiciary is exempt from the Open Records Act, *see* Gov't Code § 552.003(b), but only when acting in a judicial capacity. *See Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.--San Antonio 1983, no writ), (juvenile board not an extension of the judiciary); *see also* Open Records Decision No. 188 (1978) (applications held by a municipality for the position of municipal judge may not be withheld on the basis of the exemption for the judiciary). A justice court acts in its judicial capacity when it issues and maintains search warrants and other relevant documents pursuant to a criminal investigation. Thus, in this instance the Open Records Act neither authorizes the requested information held by the justice courts to be withheld nor requires it to be disclosed. Open Records Decision No. 25 (1974).

However, the justice courts may not withhold information that is specifically made public by other law. *See, e.g.*, Gov't Code § 27.004(a) (justice's dockets, books, and papers filed in a case subject to public inspection). In this regard we note that article 18.01(b) of the Code of Criminal Procedure provides:

No search warrant shall issue for any purpose in this state unless sufficient facts are first presented to satisfy the issuing magistrate that probable cause does in fact exist for its issuance. A sworn affidavit setting forth substantial facts establishing probable cause shall be filed in every instance in which a search warrant is requested. *The affidavit is public information if executed.* (Emphasis added.)

Pursuant to article 18.01(b), the justice courts must release to the public all executed affidavits attached to the search warrants. Further, although the Code of Criminal Procedure does not contain similar provisions specifically making the warrant itself or the return public information, the courts may want to consider whether these records are made public under section 27.004(a) of the Government Code.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/RWP/rho

Ref.: ID# 24800

cc: Mr. Julius Drew, Sr.
President
Civil Rights Review Corporation
P.O. Box 141308
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